

Under the Cigarette Tax Act, it is unlawful for any person to engage in the business as a distributor of cigarettes in this State without first having obtained a license or permit from the Department. See 86 Ill. Adm. Code 440.50. (This is a GIL.)

May 4, 2005

Dear Xxxxx:

This letter is in response to your letter received November 10, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

In the wake of the recent decision by COMPANIES to discontinue their long-standing practice of giving full credit to distributors and retailers for the cost of cigarettes that have aged past their code date, ABC has become interested in becoming a specialist in the purchase and resale of 'distressed' or out of code cigarettes.

Recognizing that there are a full variety of laws and statutes governing taxation, transportation and transactions involving cigarettes, at federal, state and even local levels, ABC, has undertaken a course of seeking 'letter rulings' or 'advisory opinions' from Federal and State regulatory bodies which may allow us to create a new market tier for cigarettes that would otherwise be destroyed.

Since State Departments of Revenue have long been accustomed to giving affidavits of credit through the manufacturers back to retailers and distributors for tax stamps affixed to 'expired' cigarettes that have not sold, the offer by ABC to buy this product represents a potential windfall in retained tax revenue for the States.

At the Federal Level, there are laws like the Cigarette Contraband Trafficking Act and the Jenkins Act which govern the subject of cigarettes in interstate commerce. Our first request for a letter ruling has already been sent to the ATF for clarification and

illumination regarding how these and other Federal Statutes will affect the way that the buying and selling of cigarettes that we propose must be transacted.

At the State level, there are other issues that must be addressed. Foremost among these may be the existence of Wholesale Fair Trade Laws which mandate that cigarettes must be sold above a prescribed price. We have reviewed the Wholesale Fair Trade Statutes in most states that have them, and there appear to be two exemptions which may be interpreted to allow ABC to purchase expired cigarettes at below wholesale prices. In one instance, there appears to be an exemption that makes it permissible to purchase at below prescribed wholesale levels if it is a 'one time buy.' A second exemption that is common across the States indicates that Wholesale pricing standards can be relaxed if the product is considered to be 'imperfect' or 'damaged.'

ABC is interested in obtaining a 'Letter Ruling' or 'Advisory Opinion' from your state which completely explains the legal rights and responsibilities that we are bound to surrounding the purchase of out-of-code cigarettes. Furthermore, we would appreciate a more complete letter ruling which addresses other laws in your State which may come into play in our proposed type of transaction, such as whether or not ABC needs to be a registered Tobacco Wholesaler in your state in order to purchase cigarettes from companies that may be based there.

#### **DEPARTMENT'S RESPONSE:**

Under the Cigarette Tax Act, it is unlawful for any person to engage in the business as a distributor of cigarettes in this State without first having obtained a license or permit from the Department. See 86 Ill. Adm. Code 440.50. Except when the applicant is the manufacturer, no distributor's license shall be issued to an applicant unless he presents the Department with satisfactory proof in writing that he will be able to buy cigarettes directly from at least 3 major cigarette manufacturers. See Section 440.50(a).

There is no requirement that the 3 major cigarette manufacturers do business in the United States. Upon written satisfactory proof from such major cigarette manufacturers, along with a complete application, fee and bond in the amount of \$2,500, the Department will issue such distributor's license. Failure to comply with Department regulations may result in the denial of a cigarette distributor's license.

In addition, each applicant must submit an annual license fee payable to the Department for each distributor's license in the amount of \$250. All licenses issued by the Department under the Cigarette Tax Act are valid for up to one year after issuance unless sooner revoked, canceled, or suspended. The State of Illinois has no minimum pricing laws for the sale of cigarettes.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess

Associate Counsel

EEB:msk